

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:

DENNIS RAY JOHNSON, II,  
  
Debtor.

Case No. 16-30227  
Chapter 11

**PROTECTIVE OBJECTION OF ZACHARY B. BURKONS, AS RECEIVER, TO  
(I) MOTION OF DENNIS RAY JOHNSON, II, TO TREAT TRUSTEE'S MOTION TO  
COMPROMISE AS A SALE MOTION UNDER 11 U.S.C. §363 AND  
(II) UPSET BID OF DENNIS RAY JOHNSON, II, FOR SALE OF CIVIL ACTION**

Zachary B. Burkons, as Receiver ("**Burkons**"), by counsel, hereby objects (this "**Objection**") to (i) the Motion of Dennis Ray Johnson, II, to Treat Trustee's Motion to Compromise as a Sale Motion Under 11 U.S.C. § 363 [Doc. 1105] (the "**Motion**") and (ii) the Upset Bid of Dennis Ray Johnson, II, for Sale of Civil Action [Doc. 1107] (the "**Upset Bid**," together with the Motion, the "**Johnson Litigation Filings**"). In support of this Objection, Burkons states as follows:

**Background**

1. On or about November 24, 2015, Peoples Bank, National Association ("**Peoples Bank**") filed an action in the Circuit Court of Cabell County, West Virginia (the "**State Court**"), which included a request for the appointment of a receiver with respect to the Debtor and certain of his entities. In January 2016, Peoples Bank specifically moved in the State Court for the appointment of a receiver.

2. On May 9, 2016, Dennis Ray Johnson, II (the "**Debtor**") filed a voluntary case under chapter 11 of title 11, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"). [Doc. 1].

3. On or about August 16 or 18, 2016, the State Court entered an order that appointed Burkons as a successor receiver for those entities.

4. The Debtor operated as a debtor-in-possession until November 7, 2016.

5. On November 7, 2016, this Court appointed Thomas H. Fluharty as the Chapter 11 Trustee (the “**Trustee**”) of the bankruptcy estate of the Debtor. [Doc. 169].

6. Also on November 7, 2016, this Court administratively consolidated this case with the bankruptcy cases of other entities related to the Debtor. [Doc. 170].

7. On October 26, 2017, the Trustee filed an action in the United States District Court for the Southern District of West Virginia (the “**District Court**”), case number 16-cv-9874, styled *Thomas H. Fluharty, Trustee v. Peoples Bank, NA, et al.* (the “**District Court Case**”). [Doc. 1, Case 17-cv-4220].

8. The District Court Case asserted claims against a variety of parties, including Burkons, for actions arising out of Peoples Bank’s loans to the Debtor and his entities, collection activity taken by Peoples Bank, and the actions of Burkons as a State-Court-appointed receiver. [Doc. 1, Case 17-cv-4220].

9. On April 24, 2018, the District Court entered an order dismissing Burkons from the District Court Case, finding that the Trustee had failed to obtain permission from the State Court to file an action against Burkons, and that the District Court lacked subject matter jurisdiction as a result. [Doc. 87, Case 17-cv-4220].

10. On May 30, 2018, after it became apparent to the Trustee that the Debtor had engaged in misconduct and made misrepresentations that resulted in the District Court Case lacking as much merit as the Trustee had originally believed, the Trustee filed his motion in this

Court to compromise the estate claims that were the subject of the District Court Case. *See* [Doc. 1040].

11. The Trustee's motion was withdrawn on June 14, 2018. [Doc. 1046].

12. However, on July 3, 2018, the Trustee filed a similar motion to compromise the estate's claims in the District Court Case. [Doc. 1084].

13. On August 3, 2018, the Debtor filed his Johnson Litigation Filings, asking essentially to take over the District Court Case.

### **Objection**

14. To the extent the Debtor is asking this Court to permit the Debtor to take over the District Court Case and revive or renew the action or claims against Burkons, Burkons objects.

15. The District Court has already entered an order finding that it lacks subject matter jurisdiction over Burkons.

16. Burkons is no longer a party to the District Court Case, and is not a proper defendant in the District Court Case.

17. Accordingly, no matter what happens in connection with this Court's disposition of the Johnson Litigation Filings, Burkons objects to any relief that would contravene the District Court's order dismissing Burkons or that would otherwise permit the Debtor to name Burkons in the District Court case should the Debtor obtain the relief requested in the Motion.

WHEREFORE, for the reasons set forth above, in the event the Motion is granted and the Upset Bid is accepted, Burkons respectfully requests that this Court enter an order (a) recognizing the Burkons Dismissal and providing that the Litigation be reinstated without Burkons as a defendant, and (b) granting such other and further relief as is just and proper.

ZACHARY B. BURKONS, AS  
RECEIVER,

By Counsel

/s/ Daniel J. Cohn

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**CERTIFICATE OF SERVICE**

I, Daniel J. Cohn, do hereby certify that I served the foregoing **Protective Objection of Zachary B. Burkons, as Receiver, to (I) Motion of Dennis Ray Johnson, II, to Treat Trustee's Motion to Compromise as a Sale Motion Under 11 U.S.C. §363 and (II) Upset Bid of Dennis Ray Johnson, II, for Sale of Civil Action** by electronic transmission to all persons registered to receive electronic notices in this case by means of the Court's CM/ECF noticing system, and, where indicated by a mailing address below, by first class United States Mail, postage pre-paid, and properly addressed, all on August 27, 2018.

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